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MONTANA PROSECUTOR

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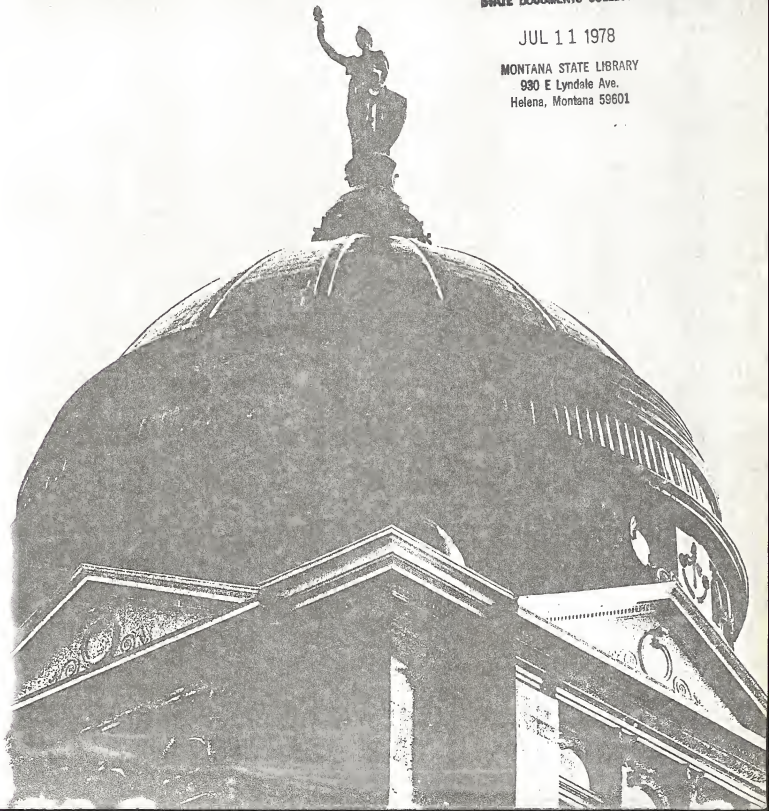

INTRODUCTORY NOTES

The National College of District Attorneys is sponsoring a Trial Techniques Seminar in Los Angeles on March 14-18, 1978. Application to attend may be directed to the Office of County Prosecutor Services. Funds are available to finance attendance at this seminar or others that may be available.

An in-state training seminar for Montana County Attorneys and their deputies is being planned for April, 1978. The topic will be prosecution of drug cases and the date of April 20 and 21, 1978 have tentatively been selected. Plans call for the conference to be presented in Bozeman. The schedule will not be as rigorous as the one at the last seminar but the caliber of training will not be sacrificed. If there are any reactions to this plan your comments are welcome.

A Reminder

Appellate counsel within the Attorney General's Office have requested that prosecutors document in the record or by memorandum any delay which the accused requests or in which he acquiesces. Failure to do so makes facing a speedy trial issue extremely difficult on appeal because the undocumented delays become unexplainable over a long period of time.

CRIMINAL JUSTICE EXPENDITURES

Nationally, our criminal justice system cost seventeen billion dollars in 1975. This was a six billion dollar increase since 1971 or an escalation of $45 to $71 for every man, woman, and child in this country. Federal and state governments increased their financial output 82 and 108 percents respectively. Although local government only experienced a 58 percent increase rate, they still outspent the federal government by a 5 to 1 ratio.

These figures were the product of a survey conducted by the Law Enforcement Assistance Administration and the U.S. Bureau of Census. The study included costs of law enforcement agencies, courts, legal services, prosecution, public defense, and corrections.

While state governments bear most of the costs of corrections, expenditures for police protection represented about fifty-six percent of all direct criminal justice costs. In 1975, 5.6 billion dollars was spent for police protection by city governments alone.

RAPE STATISTICS

A rapist has about a 1.1 percent chance of serving time for his offense. This, according to Margaret Jordan, former District Attorney and now president of the Metropolitan Organization to Counter Sexual Assault (MOCSA) in Kansas City. This percentage is based upon a combination of factors inherent in rape prosecutions. Initially, there is only a 30 percent reporting rate as most women refuse to even notify the police. Apprehension of a suspect only occurs two-thirds of the time. These considerations, coupled with refusal of witnesses to testify and a low national conviction rate of twenty percent of the cases that actually go to trial, are the reasons Ms. Jordan assigns for a poor conviction record of the rapist.

FBI CRIME STATISTICS RELEASED

The FBI's Uniform Crime Reports revealed that crime in America dropped 9 percent below the crime level for the same period last year during the first three months of 1977. This represents the largest quarterly drop in the nation's crime rate since the inception of the Crime Reports in 1958. Larceny showed the most significant decline of 11 percent. Robbery dropped 8 percent; burglary, 7 percent, murder, 5 percent, and auto theft, 4 percent. Only rape demonstrated an increase of 5 percent. The central-northern section of the nation experienced a dramatic 16 percent reduction in crime. These figures were especially encouraging since the 1976 Uniform Crime Reports showed no crime increase for that year.

COUNTERFEIT BANK AMERICARDS BEING PASSED

Approximately 20 counterfeit Bank Americards have been used to ring up a little less than $50,000 of losses in the Florida area, according to recent reports. The phony credit cards have been silk-screened on plain white hand-cut plastic and they are being passed off as real credit cards in restaurants and stores.

While the loss has been small by most standards, "It's the potential that has us worried," asserts Ralph O. Dunker, head security administrator for Visa U.S.A. Inc., the administrative organization for banks issuing Bank Americards and the Visa cards that are replacing them.

So far, such fraud has been limited by the number of credit cards that thieves were also to steal or obtain fraudulently. Mass counterfeiting, however, would inject an entirely new element, with losses mushrooming as fast as phony cards could be produced and passed along to front men, junkies or others willing to make a quick illegal dollar.

Last year, industry-wide credit card losses were about $714 million compared with $667 million the prior year. "If widespread credit card counterfeiting occures, credit card issuer fraud losses could hit $6 billion to $10 billion a year by 1986," predicts a limited distribution report by Frost and Sullivan, Inc., a research concern based in New York. According to the same report, there are already how-to-do-it booklets circulating in most U.S. prisons telling how to steal and use stolen credit cards; however, thus far they do not include counterfeiting information.

MARIJUANA PATCHES REPLACING MOONSHINE STILLS IN SOUTHEAST

Federal Treasury agents, who in the past year have smashed the smallest number of stills since the repeal of Prohibition in 1933, report they are finding more and more marijuana patches in the hills and gullies of the south where they used to find high-octane moonshine stills.

Ninety-seven percent of the 557 stills seized nationwide last year were in North Carolina, Georgia, Alabama, South Carolina, Virginia, Mississippi, Tennessee and Florida. Most of the stills were found in the Appalachian Mountains, and it is there the federal, state and local authorities claim they have unearthed the moonshine-marijuana connection. ATF and other state and local officers verified the moonshine-marijuana connection in other areas.

According to veteran federal agents, moonshinging was dealt a near-fatal blow when sugar, a key ingredient, spiraled in cost in 1975. White lightning today retails throughout the Southeast at prices equal to bonded liquor.

MARIJUANA PATCHES (cont.)

It has also been reported the marijuana flown in from Mexico is being mixed with the poorer quality mountain grown marijuana to bring it up to snuff.

Some law enforcement officials disputing Carter Administration claims, say they fear an increase in marijuana growing if the President is successful in decriminalizing the possession of small amounts.

WHAT PRISONS CAN AND CANNOT DO

"The lamentable fact that the 'rehabilitation' of criminals has not been one of the brighter accomplishments of prisons, in the United States or anywhere else, has received striking confirmation in Sweden. A recent report discloses that in a country that boasts one of the world's most progressive and humane prison systems, the rate of recidivism is now about 70 percent, that is, seven of ten convicts return to crime after their release. 'Our philosophy of rehabilitation has been shipwrecked." says Swedens's chief prosecutor. "Criminality will not be cured through prison rehabilitation."

American experts, too have been forced to concede that prisons are not much good at transforming criminals into honest citizens.

Our prisons should, of course, be run humanely - but without any illusions about their powers of redemption. Most prisons need not longer aspire to be schools or counseling centers or anything but places with bars and locks. That is not to say that research should not go forward to find ways of helping at least some prisoners break out of the pattern of criminal life. But the realistic priority today is simply to keep the apparently incorrigible from menacing others."

JURY FUNCTIONS 'CAPTURED' ON FILM

A 25-minute film designed to orient prospective jurors in Federal and state courts is now available.

". . . AND JUSTICE FOR ALL" portrays the functions of a jury and familiarizes jurors with courtroom language and procedures. The film, which was produced by Wayne State University's Center for the Administration of Justice under an LEAA grant, has been recommended by the Jury Management Committee of the Federal Judiciary for use in Federal courts and is presently being used in 36 Federal courts and many state courts.

In a survey of jurors who viewed the film, 94 percent found it helpful in carrying out their jury duty. The film is being distributed by POST-SCRIPT, Box 213 Birmingham, Mich. 48012. Preview prints are free, a 3-day rental charge is $25, and the purchase price is $225.

AIDING AND ABETTING

Proper to convict defendant of aiding and abetting a stabbing where evidence showed that he lured the victim outside, even if the jury didn't believe that he stabbed the victim himself. State v. Young 569 P.2d 815.

BREATHALYZER

Court agrees with prior authority that where defendant did not make a timely demand and where defendant did not make a prior showing of materiality and necessity to have the breathalyzer test ampule in order to get a fair trial, proper to refuse to order production of the test ampule. State v. Cantu 569 P.2d 298.

DOUBLE JEOPARDY

Consent, in the absence of intentional prosecutorial misconduct or other extraordinary circumstances, waives double jeopardy problems and consent may be inferred from silence and surrounding circumstances. Possibly valid double jeopardy defense was waived where the defense attorney actively participated in mistrial and retrial without once objecting. State v. Henderson 569 P.2d 252.

IDENTIFICATION

A minimum 12 year age gap between defendant and the others in the lineup and the fact that defendant was the largest person there, without any explanation why this occurred, constituted an impermissibly suggestive lineup, even though they did not notice defendants bad eye failure to notice a specific feature goes to weight, not admissibility. State v. Henderson 569 P.2d 252.

INFORMANT

Disclosure of the name of the confidential informant who was also present when the search warrant was executed, was unnecessary since defendant failed to show how the informant could have testified to facts which would have established who possessed the heroin. State v. Altamirano 569 P.2d 233.

JURORS

Exclusion of jurors with scruples against the death penalty did not result in a prosecution prone jury and was proper since the jurors had indicated that their feelings were so strong that they could not follow the court's instructions. State v. Ramirez 569 P.2d 201.

SEARCH AND SEIZURE

Where defendant and locked bags were both in custody, failure to get a warrant when defendant refused consent constituted reversible error. State v. Randall 569 P.2d 313.

OTHER CRIMES

Prior kidnap and assault of another victim was admissible to prove intent in a later homicide/kidnapping prosecution where the methods were very similar and both crimes were attempts to regain ripped off drugs. The dismissal of the prior charges with prejudice did not preclude the use of the evidence since defendant had not been put in jeopardy on those charges. State v. Swinburne 569 P.2d 833.

PRIOR CONVICTIONS

Armed robbery is a crime reflecting moral turpitude. Proper to use a 1958 armed robbery conviction to impeach where defendant had been in and out of prison on the conviction until two years before the rape of which he was convicted. State v. Henderson 569 P.2d 252.

PROBATION CONDITIONS

Even if urine sample freely given probation officer was an illegal search and seizure, court refuses to extend exclusionary rule to actions of a probation officer, since the need for deterrance is outweighed by the need for securing compliance with probation conditions. The "search" was also proper since there was a valid consent to search clause in defendant's probation terms. State v. Robeldo 569 P.2d 288.

SPEEDY TRIAL

Defendant's right to a speedy trial does not attach until indictment and was not violated by a good faith seven month delay necessary to allow an officer to remain undercover. Delay between indictment and arrest was properly excluded where defendant avoided or tried to avoid, arrest on 3 separate occasions, several surveillances failed to catch her, and her probation officer told her that there was a warrant out for her. State v. Torres 569 P.2d 807.

THREATS

Threat to kill the man who was messing around with his wife four and one half hours before defendant killed his wife was not hearsay since it showed defendant's state of mind and was admissible to prove premeditation, etc. Clearly intent to kill the wife's lover is connected with killing the wife. State v. Ramirez 569 P.2d 201.

INADEQUATE OR INEFFECTIVE COUNSEL: TEST FOR DETERMINING: PREJUDICE

The Ninth Circuit Court of Appeals has ruled that effectiveness of counsel is no longer to be judged by the farce or mockery test. Clearing up ambiguous language in prior cases, the Court has held that the appropriate standard is "counsel reasonably likely to render and rendering reasonably effective assistance." The Court takes the position that once a defendant has carried his burden of establishing the ineffectiveness of trial counsel, the conviction will be reversed without regard to the presence or absence of prejudice. These guidelines for evaluating claims of attorney inadequacy were formulated: "In summary, the role of the District Court presented with allegations of ineffective assistance of counsel is not to pass upon the merits of the action not taken [by counsel] but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance. This does not mean that it should second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success. It is sufficient if he is prepared and conducts the defense with reasonable knowledge and skill with an exercise of knowledgeable choices of trial tactics. To accept less simply assures the criminal defendant the form but not the substance of any real representation." Cooper v. Fitzharris, 551 F.2d 1162, 9th Cir., 1977.

VOICE PRINT IDENTIFICATION

While there may be no constitutional imperative for it, at least one court has strongly suggested that defense counsel should be permitted to attend a voice print identification procedure of his client, although strictly as a non-participant. ". . . while there may be no violation of an accused's constitutional rights in not having his lawyer present at all pre-trial investigatory examinations, it is a frequently repeated proposition that once a criminal action has commenced, a defendant is entitled to the assistance of counsel at every stage of the proceeding against him . . .Certainly, this court perceives no reason why the defendant's lawyer should not, if he chooses, be permitted to attend, strictly as a non-participant, the voice print identification." People v. Evans, 393 N.Y.S. 2d N.Y. Sup. Ct., N.T.Co., 1977.

PROSECUTION ARGUMENT: DETERRENT TO OTHERS

It is improper to argue that punishment meted out to the defendant will serve as a warning to other would-be criminals, but in the instant case, in view of the overwhelming weight of the evidence against the defendant, the error complained of did not result in a miscarriage of justice, nor constitute a substantial violation of a constitutional or statutory right. Beeks v. State, 563 P.2d 653, Okla., 1977.

PROSECUTING ATTORNEY: IMMUNITY; CLOSING ARGUMENT; INVESTIGATION

The remarks of a prosecuting attorney in closing argument are absolutely privileged and he can not be subjected to civil liability for slander as a result thereof, according to the Court of Appeals of Kansas. The Court also held that the same policy considerations requiring absolute immunity for communications made during the course of a prosecution also required immunity for the conduct by the prosecutor in investigations which may lead to a prosecution. "It has long been recognized that the county or district attorney is the chief law enforcement official in his jurisdiction and that a criminal proceeding is a matter of state concern and the control of it is in the county attorney. . .It is his duty to inquire into the facts of violations. If the inquiry discloses that an offense has been committed, he must institute proceedings for its punishment. By statute he is given the authority to conduct inquisitions and to grant immunity to witnesses. . .The same policy considerations requiring absolute immunity for communications made during the course of a prosecution require immunity for conduct in investigations which may lead to a prosecution. We hold that the power of the district attorney to investigate alleged violations within his jurisdiction is unquestionable and his motive in so doing may not be the subject of a law suit against him." Sampson v. Rumsey, 563 P.2d 506, Kan., 1977.

PROSECUTION ARGUMENT: REFERENCE TO FEELING SORRY FOR VICTIMS

Where defendant was prosecuted for selling cocaine, no error was found in the prosecutor's closing argument to the effect that it was time to quit feeling sorry for defendant and time to feel sorry for victims, and, if the jurors felt sorry for the defendant, they had to feel sorry for the people "who get messed up on this same thing." The Court ruled that this was simply pointing out the evils that arise from improper use of drugs and their consequence. This is within the bounds of legitimate inferences to be drawn from the evidence. Rogers v. State, 346 So.2d 29, Ala.App., 1977.

PROSECUTION ARGUMENT: CHARACTERIZATION OF DEFENDANT; "COLD-BLOODED MURDERER"

A prosecution reference to defendant as a "cold-blooded murderer" was not error where, from the evidence in his capital murder prosecution, it was warranted. "In reveiwing the evidence in a light most favorable to the verdict, it revealed that appellant, during an armed robbery, led the deceased into a back storage room, made him lay face down on the floor and then shot him six or seven times in the back of the head. Under these circumstances, the statement by the prosecutor was a reasonable deduction from the evidence." Collins v. State, 548 S.W.2d 368, Tex., 1976.

WARRANTLESS ARREST: PROBABLE CAUSE; ATTITUDE OF ARRESTING OFFICER

If there is probable cause for an arrest without a warrant, based upon probabilities arising from known facts and circumstances the attitude of the police officer making the arrest is of no legal consequence. Thus a remark by the arresting officer allegedly establishing a prejudicial attitude against the defendant ("scum") would not affect a finding of probable cause for the arrest. State v. Brocato, 563 P.2d 470, Kan., 1977.

SEARCH WARRANTS: PROBABLE CAUSE; STALENESS OF INFORMATION

A four month interval between the sale of allegedly stolen chain saws to the defendant and the execution of an affidavit for a search warrant, did not render the information in the affidavit too stale to permit a finding of probable cause for the search, where the affidavit referred to the defendant's purchase of television sets which indicated a continuing criminal activity with respect to stolen property, and the informer apparently had first hand knowledge of the television thefts and was reliable, and articles such as chain saws are likely to remain in the hands of a receiver of stolen property for a longer period of time than other items. Commonwealth v. Blye, 362 N.E.2d 240, Mass,App. 1977.

CONSENT: VOLUNTARINESS; EXPRESSION OF "YES"

Merely because a defendant answers "yes" or "yeah" to a request to search does not mean that his consent is involuntary. "But there is no talismanic phrase which must be uttered by a suspect in order to authorize a search. The request which officer Ferraro put to defendant was clear and simple, and the affirmative response of the latter was far less equivocable than many which have been found to evidence consent. . .Indeed, no words at all need be spoken; in appropriate circumstances, consent to enter may be unmistakably manifested by a gesture alone." Additionally, the Court found that the consent to search defendant's house was not involuntary because he was under arrest and in handcuffs at the time. Although surrounded by armed officer when he consented, the arresting officer did not hold the defendant at gunpoint, did not unduly detain or interrogate him, did not claim a right to search without permission, and did not act as if he intended to enter regardless of defendant's answer. Additionally, the Court found that the consent was not rendered involuntary because the officers did not advise defendant of his Miranda rights nor that he could deny them the right to enter his house. However, the failure of the police to expressly tell a defendant that he can deny them the right to search is a factor to be taken into account in applying the totality of circumstances test for voluntariness of the consent ultimately given. People v. James, 561 P.2d 1135, Cal. 1977.

WEAPONS: DANGEROUS WEAPON; WALKING STICK

A walking stick was a "dangerous weapon" in a prosecution for assaulting a mail carrier with a dangerous weapon, where the defendant struck the mail carrier twice with the stick, once on the back and once on the jaw with such force that the stick broke. As said, the stick could easily have caused grave bodily injury to the mail carrier.

CONSENT: UNWED PARTNER

The fact that a woman, who lived with the male defendant, although they were not married, consented to a search of a closet, which contained only the defendant's belongings and which the woman went into only when cleaning the house, did not give the police the authority to conduct a warrantless search in the face of the defendant's objection. The Court also notes that the fact that the parties were not married was not determinative of the question of authority to consent to a search. "In circumstances where a couple have joint dominion and control of premises and one party is present and objecting while the other party has consented to a search without a warrant, the validity of the search should not hinge on the marital status of the parites. There is nothing which distinguishes the married couple fromt he unmarried one that has any real bearing on the validity of consent to a warrantless search." The general rule applied here was that although a joint occupant has authority to consent to a search of jointly-held premises if the other party is unavaliable, the joint occupant does not have such authority if the other party is present and objecting, particularly if the police know that the objecting party is the one whose constitutional rights are at stake. Silva v. State, 344 So.2d 559, Fla., 1977.

RIGHT TO PRIVACY: REASONABLE EXPECTATION; COMMON WALLS

Where police officers obtained the permission from the manager of a boarding house to enter and occupy a vacant room adjacent to the defendant's room, and placed their ear to the dividing wall where they were able to overhear conversations and noises from which they concluded that narcotics activity was occurring inside defendant's room, defendant's Fourth Amendment right to privacy had not been violated. "We do not believe that either the California Constitution provision protecting the right to privacy or the reasoning expressed in White v. Davis gives to criminals any greater right to privacy than that enjoyed by ordinary citizens who daily assume the risk that their neighbors may listen to their conversations through a common wall." People v. Kaaienapua, 138 Cal. Rptr. 651, Cal.App. 1977.

EXCLUSIONARY RULE: APPLICABILITY TO PROBATIONER

Reversing prior case law, State v. Davis/Travis, 96 P.2d 923 (Ore.App., 1972), the Court of Appeals of Oregon has ruled that a probationer retains all civil liberties except those which are taken away as conditions of probation. The Court holds that a trial court may, for probationary purposes of prevention of recidivism and of supervision for public safety, require as a specific condition of probation that a probationer consent to warrantless searches by his probation officer and waive his right to refrain from self-incrimination. State v. Culbertson, 563 P.2d 1224, Pre.App., 1977.

MIRANDA: WAIVER; EFFECT OF DEFENDANT'S INITIAL EXERCISE OF RIGHTS; MICHIGAN V. MOSELY

Where defendant was interrogated by a police officer from municipality A concerning a burglary that took place in city A, and twice refused to waive his Miranda rights, he could adequately and effictively waive his Miranda rights during interrogation by a police officer two and one half days later from municipality B, where the latter officer was investigating a burglary that took place in city B. This court follows the rule of Michigan v. Mosley, 423 U.S. 96 (1975) where it was held that Miranda does not create a per se proscription of any futher interrogation once the person being questioned has indicated a desire to remain silent. The guidelines from Moseley were satisfied, since the police officer from municipality B went to considerable lengths to make the defendant aware of his Miranda rights. The instant Court rejected an argument that it should adopt a "per se proscription" approach, noting that there is no necessity therefore because Mosley gives adequate protection against compulsory self-incrimination. People v. Pettinghill, 137 Cal.Rptr. 601, Cal.App., 1977.

INTERFERING WITH POLICE OFFICER IN PERFORMANCE OF HIS DUTIES: TRAFFIC CASE

A defendant could not be convicted of the offense of interfering with a police officer in the performance of his duties, where although he did flash his headlights to warn others of an impending radar speed trap, there was no showing that any of the motorists so warned were violating the speed law at the time of the warning. City of Warrensville Hts. v. Wason 361 N.E.2d 546, Ohio, 1977.

DISORDERLY CONDUCT: ABUSIVE OR OBSCENE LANGUAGE; FIGHTING WORDS

The words "f---, pig" and "mother f--- and son of a bitch" were "fighting words" within purview of a disorderly conduct statute (Ark. Stats., Section 41-2908(c) which prohibited the use of abusive or obscene language in a manner likely to provoke violent or disorderly response. The Court ruled that it was not necessary that the person addressed react violently to warrant a conviction under the statute. The addressee of the remarks was a police officer in his off-duty employment as a security guard at a department store. Bousquet v. State, 548 S.W.2d 125, Ark., 1977.

PROBATION: CONDITIONS; SEARCH AND SEIZURE BY PEACE OFFICERS

A condition of probation that the defendant submit to a search and seizure of personal property at any time by any peace officer or probation officer was held to be overbroad because it did not limit the authority to search to the probation officer or to a peace officer at the probation officer's direction and because it did not require any factual basis that a breach of probation was occurring or was about to occur prior to the search. State v. Page, 564 P.2d 82, Ariz.App., 1976.

"Hey Duke, wanna' meet my lawyer?"

DRUGS AND NARCOTICS

Knowledge of drug sale, possession of a gun and knowledge of heroin dealers was admissible to rebut the innocent bystander defense and to show motive, intent, guilty knowledge, etc. State v. Youtsy, 570 P.2d 214.

INFORMANT

Proper to refuse to disclose the informant's identity where he was not present at the search and the defendant failed to show the informant could testify about who owned the drugs. State v. Bohn (Ariz.) 570 P.2d 187.

MIRANDA

The failure of a probation officer to give Miranda warnings does not prevent the use of the probationer's admissions at a subsequent probation revocation, the failure only prevents their use at a subsequent trial for that offense. State v. Rivera (Ariz.) 569 P.2d 1347.

SENTENCE

Sentence of 30-90 years, instead of 25 to life, for second degree murder was not unconstitutional, because it required a longer stay before parole eligibility, parole is not a constitutional right. State v. Williams, 569 P.2d 1356.

ARGUMENT

A "must read" argument case for prosecutors, including arguments about smokescreens, prosecutors not risking licenses by suborning perjury, defendant going to trial in the face of overwhelming evidence because that was his right, and answering a defense attorney's question about the whereabouts of a witness with the not in evidence objection that the witness was dead, all held either invited or proper. People v. Griggs (Ill.App.) 366 N.E.2d 581.

CRIMINAL INTENT

Where defendant was observed breaking in front door of a liquor store in the early morning hours, intent to commit crime, as a necessary element of crime, could be inferred beyond a reasonable doubt from circumstances of breaking, in absence of evidence by defendant to show that breaking was for lawful purpose. People v. Gilligan (N.Y.) 367 N.E.2d 867.

CRUELTY

A murder may be committed with extreme cruelty although death results from a single blow. Here a one blow killing was properly 1st degree murder by extreme cruelty where blow was unusually hard and defendant said that he did it just for kicks. Commonwealth v. Golston (Mass.) 366 N.E.2d 744.

ENTRAPMENT

Court determination of entrapment does not deprive defendant of Sixth Amendment right to trial by jury, and defendant's not required to admit criminal act in order to raise entrapment issue and defendant will have burden of proving entrapment by a preponderance of evidence. People v. D'Angelo (Mich.) 257 N.W.2d 655.

EQUAL PROTECTION

Statute, which makes it crime for husband to fail to support his wife and crime for husband to desert his wife, but which does not create reciprocal crimes for wife who deserts or fails to support her husband, establishes distinction solely upon basis of sex and this is unconstitutional in violation of state's equal rights amendment. Coleman v. State (Md.Sp.App.) 377 A.2d 553.

JURORS - RACE

While the prosecutor may have been racially bigotted or stereotyping, use of premptory challenges to systematically exclude blacks from the jury of a black defendant, when there was a racial epithat in the evidence of the case, did not deny the defendant equal protection. People v. Johnson (Cal.App.) 141 Cal. Rptr. 418.

PRIOR CONVICTIONS

Witness may be impeached with evidence of prior conviction even though conviction was based on guilty verdict only and was used before judgment and sentence were entered. The jury's verdict of guilty is no less final than a conviction during the pendency of an appeal. United States v. Klein (5th Cir.) 560 F.2d 1237.

PROBATION

Discussion of probation condition ordering defendant, who is pleading guilty, to disclose information as to other crimes. Court upholds condition on grounds that the disclosure requirement was authorized by Federal Probation Act and the condition did not, on its face, require self-incrimination. United States v. Pierce (9th Cir.) 561 F.2d 735.

TAPE RECORDING

Tape recordings of conversations of defendants, without their consent, while they were confined alone in police car was not unlawful incursion into Fourth Amendment rights because they had no expectation of privacy, and did not violate Fifth Amendment as contrary to Miranda rights because conversation was not responsive to any process of interrogation. Brown v. State (Fla.App.) 349 So.2d 1196.

SENTENCING

Proper to consider fact that defendant committed perjury during the trial when sentencing him after the guilty verdict. Fox v. State, (Alaska) 569 P.2d 1335.